

Remarks

Status of the claims

Claims 1-24 are pending.

Claims 1-24 are subject to a restriction requirement.

Restriction requirement

As stated in the Office action, at page 2, paragraph 1, restriction to one of the following inventions was required:

- I. Claims 1-24, drawn to fluorescently labeled multimeric complex comprising MHC class I domain moieties, a method of labeling T cells, and a kit comprising the complex.
- II. Claims 1-24, drawn to fluorescently labeled multimeric complex comprising MHC class II domain moieties, a method of labeling T cells, and a kit comprising the complex.
- III. Claim 10, drawn to fluorescently labeled multimeric antibody complex specific for the antigen receptor of a CD8+ T cell.
- IV. Claim 10, drawn to fluorescently labeled multimeric antibody complex specific for the antigen receptor of a CD4+ T cell.

Applicants respectfully submit that the restriction requirement is improper and traverse for the reasons set forth below.

A restriction requirement is proper only where more than one independent and distinct are claimed in one application (see 35 USC §121 :“If two or more independent and distinct are claimed in one application, the Director may require the application to be restricted to one of the inventions” (emphasis added)). It is improper to require restriction to unclaimed species that fall within the scope of the claims. The present restriction requirement is improper because inventions I-IV are not claimed inventions, but rather correspond to no more than unclaimed species that fall within the scope of the claims.

Inventions I and II, as defined, are distinguished solely by whether the claims refer to an MHC class I domain moiety or an MHC class II domain moiety. However,

these do not reflect claimed species. In fact, no claim is drawn to a species distinguished by whether the MHC moiety is a class I or a class II MHC moiety. Claims 1-24 are drawn to a genus invention with respect to the class of the MHC moiety.<sup>1</sup>

Similarly, inventions III and IV, as defined, are distinguished solely by whether the fluorescently labeled multimeric antibody complex specific for the antigen receptor of a T cell is specific for a CD4+ T cell or a CD8+ T cell. However, these do not reflect claimed species. In fact, no claim is drawn to a species distinguished by whether the T cell is a CD4+ T cell or a CD8+ T cell. All claims that refer to a T cell are drawn to a genus invention with respect to whether the T cell is a CD4+ or CD8+ T cell.<sup>2</sup>

For a restriction requirement to be proper, claims to be restricted to different species must be mutually exclusive, i.e., must recite the mutually exclusive characteristics of such species (see MPEP §806.04(f)). The present restriction requirement is improper because the mutually exclusive characteristics that define inventions I-IV are not recited in the claims. Applicants point out that the lack of mutually exclusive claim limitations is readily apparent also from Examiner's stated grouping of claims corresponding to the invention groups: claims 1-24 were listed as corresponding to both inventions groups I and II; claim 10 was listed as corresponding to all groups.

In summary, the pending claims do not define multiple independent and distinct inventions. The claims are drawn to a genus invention and do not recite the mutually exclusive characteristics of the species defined by inventions I-IV. Applicants respectfully request reconsideration and withdrawal of the restriction requirement because the restriction requirement is improper for the reasons set forth herein.

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<sup>1</sup> Claims 1 and dependent claims 2-8 and 11-24, specify a recombinant fusion protein that comprises "an MHC peptide-presenting moiety"; claims 9 specifies a means capable of contributing to presentation of a peptide antigen to an MHC-restricted T lymphocyte; and claim 10 makes no mention of MHC.

<sup>2</sup> In particular, claim 10 specifies an intrinsically fluorescent, multimeric protein complex for labeling T lymphocytes according to the specificity of their antigen receptors, comprising means for binding to a T lymphocyte according to the specificity of its antigen receptor.

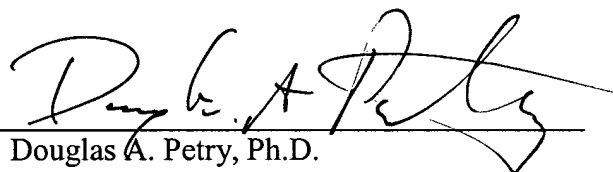
Election of Invention

Applicants traverse the restriction requirement for the reasons discussed above. However, to satisfy the requirements for a complete reply, Applicants elect the invention of Group I, claims 1-24, for further prosecution.

Applicants point out for the record that an election of claims in response to a restriction requirement is only a selection of claims for continued prosecution, and does not alter the scope of the individual claims elected. Thus, elected claims 1-24 are pending with their original scope.

Respectfully submitted,

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Date

  
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Douglas A. Petry, Ph.D.

Reg. No. 35,321

Agent for Applicants

Customer No. 26253

Tel: (408) 518-5074

Fax: (408) 954-4122